

AMENDED IN ASSEMBLY APRIL 22, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1124**

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**Introduced by Assembly Member Yamada**

February 27, 2009

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An act to amend Section 56505 of the Education Code, relating to special education.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1124, as amended, Yamada. Special education: due process hearings.

Existing law establishes the right of individuals with exceptional needs to a free appropriate public education and ensures the right to special education and related services, including, for individuals under 3 years of age, specified services under the California Early Intervention Services Act. Existing state and federal law prescribe specified rights and procedural requirements relating to administrative hearings involving an application for initial services from an individual with exceptional needs who is no longer eligible for early intervention services under the California Early Intervention Services Act because he or she has reached 3 years of age.

This bill, subject to receipt of federal funding, would require local educational agencies, during the pendency of a hearing involving an application of a pupil for initial services under a preschool program serving individuals with exceptional needs between 3 to 5 years of age, inclusive, who is no longer eligible for early intervention services under the California Early Intervention Services Act because he or she has

reached 3 years of age, to continue to provide the same services that were provided under the California Early Intervention Services Act.

Because this bill would require local educational agencies to provide a pupil with certain services beyond the age at which he or she was qualified to receive those services, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 56505 of the Education Code is amended  
2     to read:  
3     56505. (a) The state hearing shall be conducted in accordance  
4     with regulations adopted by the board.  
5     (b) The hearing shall be held at a time and place reasonably  
6     convenient to the parent or guardian and the pupil.  
7     (c) (1) The hearing shall be conducted by a person who, at a  
8     minimum, shall possess knowledge of, and the ability to  
9     understand, the provisions of this part and related state statutes  
10    and implementing regulations, the federal Individuals with  
11    Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), federal  
12    regulations pertaining to the act, and legal interpretations of this  
13    part and the federal law by federal and state courts, and who has  
14    satisfactorily completed training pursuant to this subdivision. The  
15    Superintendent shall establish standards for the training of hearing  
16    officers, the degree of specialization of the hearing officers, and  
17    the quality control mechanisms to be used to ensure that the  
18    hearings are fair and the decisions are accurate.  
19    (2) The hearing officer shall possess the knowledge and ability  
20    to conduct hearings in accordance with appropriate, standard legal  
21    practice.

1 (3) The hearing officer shall possess the knowledge and ability  
2 to render and write decisions in accordance with appropriate,  
3 standard legal practice.

4 (4) A due process hearing shall not be conducted by an  
5 individual listed in Section 1415(f)(3)(A)(i) of Title 20 of the  
6 United States Code. Pursuant to Section 300.511(c)(2) of Title 34  
7 of the Code of Federal Regulations, a person who is qualified to  
8 conduct a hearing is not an employee of the agency solely because  
9 he or she is paid by the agency to serve as a hearing officer. The  
10 hearing officer shall encourage the parties to a hearing to consider  
11 the option of mediation as an alternative to a hearing.

12 (d) (1) Pursuant to Section 300.518(a) of Title 34 of the Code  
13 of Federal Regulations, during the pendency of the hearing  
14 proceedings, including the actual state-level hearing, or judicial  
15 proceeding regarding a due process hearing, the pupil shall remain  
16 in his or her present placement, except as provided in Section  
17 300.533 of Title 34 of the Code of Federal Regulations, unless the  
18 public agency and the parent or guardian agree otherwise. A pupil  
19 who is applying for initial admission to a public school, with the  
20 consent of his or her parent or guardian, shall be placed in the  
21 public school program until all proceedings have been completed.  
22 As provided in Section 300.518(d) of Title 34 of the Code of  
23 Federal Regulations, if the decision of a hearing officer in a due  
24 process hearing or a state review official in an administrative appeal  
25 agrees with the parent or guardian of the pupil that a change of  
26 placement is appropriate, that placement shall be treated as an  
27 agreement between the state or local educational agency and the  
28 parent or guardian.

29 (2) (A) If a due process hearing request involves an application  
30 of a child for initial services under a preschool program servicing  
31 individuals with exceptional needs between three and five years  
32 of age, inclusive, under Chapter 4.45 (commencing with Section  
33 56440), and the child is no longer eligible for early intervention  
34 services under the California Early Intervention Services Act (Title  
35 14 (commencing with Section 95000) of the Government Code)  
36 and its implementing regulations, because he or she has reached  
37 three years of age, the local educational agency shall continue to  
38 provide the same services that had previously been provided under  
39 the California Early Intervention Services Act, during the pendency  
40 of the hearing proceedings.

1 (B) This paragraph shall be implemented only to the extent that  
2 the Legislature appropriates funds made available to it by the  
3 federal government pursuant to the American Recovery and  
4 Reinvestment Act of 2009 or other federal legislation similarly  
5 intended to provide higher levels of federal special education  
6 funding *for this purpose*.

7 (3) If the child is found eligible for special education and related  
8 services for children three years of age and older, and the parent  
9 or guardian consents to the initial provision of special education  
10 and related services under Section 300.300(b) of Title 34 of the  
11 Code of Federal Regulations, the local educational agency shall  
12 provide those special education and related services that are not  
13 in dispute between the parent or guardian and the local educational  
14 agency.

15 (e) A party to the hearing held pursuant to this section shall be  
16 afforded the following rights consistent with state and federal  
17 statutes and regulations:

18 (1) The right to be accompanied and advised by counsel and by  
19 individuals with special knowledge or training relating to the  
20 problems of individuals with exceptional needs.

21 (2) The right to present evidence, written arguments, and oral  
22 arguments.

23 (3) The right to confront, cross-examine, and compel the  
24 attendance of, witnesses.

25 (4) The right to a written, or, at the option of the parents or  
26 guardians, electronic verbatim record of the hearing.

27 (5) The right to written, or, at the option of the parent or  
28 guardian, electronic findings of fact and decisions. The record of  
29 the hearing and the findings of fact and decisions shall be provided  
30 at no cost to parents or guardians in accordance with Section  
31 300.512(c)(3) of Title 34 of the Code of Federal Regulations. The  
32 findings and decisions shall be made available to the public after  
33 any personally identifiable information has been deleted consistent  
34 with the confidentiality requirements of Section 1417(c) of Title  
35 20 of the United States Code and shall also be transmitted to the  
36 Advisory Commission on Special Education pursuant to Section  
37 1415(h)(4) of Title 20 of the United States Code.

38 (6) The right to be informed by the other parties to the hearing,  
39 at least 10 days prior to the hearing, as to what those parties believe  
40 are the issues to be decided at the hearing and their proposed

1 resolution of those issues. Upon the request of a parent who is not  
2 represented by an attorney, the agency responsible for conducting  
3 hearings shall provide a mediator to assist the parent in identifying  
4 the issues and the proposed resolution of the issues.

5 (7) The right to receive from other parties to the hearing, at least  
6 five business days prior to the hearing, a copy of all documents  
7 and a list of all witnesses and their general area of testimony that  
8 the parties intend to present at the hearing. Included in the material  
9 to be disclosed to all parties at least five business days prior to a  
10 hearing shall be all assessments completed by that date and  
11 recommendations based on the assessments that the parties intend  
12 to use at the hearing.

13 (8) The right, pursuant to Section 300.512(a)(3) of Title 34 of  
14 the Code of Federal Regulations, to prohibit the introduction of  
15 any evidence at the hearing that has not been disclosed to that party  
16 at least five business days before the hearing.

17 (f) (1) In accordance with Section 1415(f)(3)(E) of Title 20 of  
18 the United States Code, the decision of a due process hearing  
19 officer shall be made on substantive grounds based on a  
20 determination of whether the child received a free appropriate  
21 public education.

22 (2) In matters alleging a procedural violation, a due process  
23 hearing officer may find that a child did not receive a free  
24 appropriate public education only if the procedural violation did  
25 any of the following:

26 (A) Impeded the right of the child to a free appropriate public  
27 education.

28 (B) Significantly impeded the opportunity of the parents of the  
29 child to participate in the decisionmaking process regarding the  
30 provision of a free appropriate public education to the child.

31 (C) Caused a deprivation of educational benefits.

32 (3) The hearing conducted pursuant to this section shall be  
33 completed and a written, reasoned decision, including the reasons  
34 for a nonpublic, nonsectarian school placement, the provision of  
35 nonpublic, nonsectarian agency services, or the reimbursement for  
36 the placement or services, taking into account the requirements of  
37 subdivision (a) of Section 56365, shall be mailed to all parties to  
38 the hearing not later than 45 days after the expiration of the 30-day  
39 period pursuant to subdivision (c) of Section 56501.5. Either party  
40 to the hearing may request the hearing officer to grant an extension.

1 The extension shall be granted upon a showing of good cause. An  
2 extension shall extend the time for rendering a final administrative  
3 decision for a period only equal to the length of the extension.

4 (4) This subdivision does not preclude a due process hearing  
5 officer from ordering a local educational agency to comply with  
6 procedural requirements under this chapter.

7 (g) Subdivision (f) does not alter the burden of proof required  
8 in a due process hearing, or prevent a hearing officer from ordering  
9 a compensatory remedy for an individual with exceptional needs.

10 (h) The hearing conducted pursuant to this section shall be the  
11 final administrative determination and binding on all parties.

12 (i) In decisions relating to the placement of individuals with  
13 exceptional needs, the person conducting the state hearing shall  
14 consider cost, in addition to all other factors that are considered.

15 (j) In a hearing conducted pursuant to this section, the hearing  
16 officer shall not base a decision solely on nonsubstantive  
17 procedural errors, unless the hearing officer finds that the  
18 nonsubstantive procedural errors resulted in the loss of an  
19 educational opportunity to the pupil or interfered with the  
20 opportunity of the parent or guardian of the pupil to participate in  
21 the formulation process of the individualized education program.

22 (k) This chapter does not preclude a party aggrieved by the  
23 findings and decisions in a hearing under this section from  
24 exercising the right to appeal the decision to a state court of  
25 competent jurisdiction. An aggrieved party also may exercise the  
26 right to bring a civil action in a district court of the United States  
27 without regard to the amount in controversy, pursuant to Section  
28 300.516 of Title 34 of the Code of Federal Regulations. An appeal  
29 shall be made within 90 days of receipt of the hearing decision.  
30 During the pendency of an administrative or judicial proceeding  
31 conducted pursuant to Chapter 5 (commencing with Section  
32 56500), the child involved in the hearing shall remain in his or her  
33 present educational placement, unless the public agency and the  
34 parent or guardian of the child agree otherwise. An action brought  
35 under this subdivision shall adhere to Section 300.516(c) of Title  
36 34 of the Code of Federal Regulations.

37 (l) A request for a due process hearing arising under subdivision  
38 (a) of Section 56501 shall be filed within two years from the date  
39 the party initiating the request knew or had reason to know of the  
40 facts underlying the basis for the request. In accordance with

1 Section 1415(f)(3)(D) of Title 20 of the United States Code, the  
2 time period specified in this subdivision does not apply to a parent  
3 if the parent was prevented from requesting the due process hearing  
4 due to either of the following:

5 (1) Specific misrepresentations by the local educational agency  
6 that it had solved the problem forming the basis of the due process  
7 hearing request.

8 (2) The withholding of information by the local educational  
9 agency from the parent that was required under this part to be  
10 provided to the parent.

11 (m) Pursuant to Section 300.511(c) of Title 34 of the Code of  
12 Federal Regulations, each public agency shall keep a list of the  
13 persons who serve as due process hearing officers, in accordance  
14 with Section 56504.5, and the list shall include a statement of the  
15 qualifications of each of those persons. The list of hearing officers  
16 shall be provided to the public agencies by the organization or  
17 entity under contract with the department to conduct due process  
18 hearings.

19 (n) A party who filed for a due process hearing prior to the  
20 effective date of this section is not bound by the two-year statute  
21 of limitations time period in subdivision (l) if the party filed a  
22 request within the three-year statute of limitations provision  
23 pursuant to subdivision (l) as it read prior to October 9, 2006.

24 (o) This section shall become operative October 9, 2006.

25 SEC. 2. If the Commission on State Mandates determines that  
26 this act contains costs mandated by the state, reimbursement to  
27 local agencies and school districts for those costs shall be made  
28 pursuant to Part 7 (commencing with Section 17500) of Division  
29 4 of Title 2 of the Government Code.